(22,994)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 156.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

JELSKE CRAMER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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1 In the Supreme Court of Iowa, May Term, 1911.

At Law.

JELSKE CRAMER, Appellee,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Appellant.

Appeal from Wright County District Court.

Hon. C. E. Albrook, Judge Presiding.

Nagle & Nagle, Attorneys for Appellee.
Carroll Wright, J. L. Parrish, Ladd & Rogers, Attorneys for Appellant.

Appellant's Abstract of Record.

We hereby accept due and legal service of the foregoing abstract and acknowledge receipt of copies thereof this — day of ——, 1911.

—— ——,
—— ——,
Attorneys for Appellee.

2 On the 25th day of April, 1910, the plaintiff filed in the court below, his petition as follows:

That defendant is a corporation engaged in operating a line of railroad in Iowa and Illinois and in the transportation of passengers, freight and live stock as a common carrier.

That on or about the 22d day of March, 1910, plaintiff delivered to the defendant at Galt, Iowa, on its line of railroad for transportation to Chicago, Illinois, sixty (60) head of hogs, all in good condition.

That said hogs were placed in a car furnished by defendant and were consigned to W. W. Wilson & Company, Union Stock Yards, Chicago, Illinois, to be sold by said firm on the market at said place for account of plaintiff.

That said hogs were received by defendant at Galt, Iowa, in good condition at about seven o'clock A. M. of said day and it undertook to transport said hogs as a common carrier to said destination.

That defendant negligently delayed the transportation of said hogs and did not deliver them at their destination until about 3:44 o'clock P. M. on the 23d day of March, 1910, about fifteen hours after they should have been delivered in the usual course of transportation and negligently failed and neglected to care for said hogs while in transit and delivered them at their destination in a bad and damaged condition. That thirty head of said hogs were dead when delivered.

That said thirty head of hogs if they had been delivered in good condition would have been worth on the market in said place the sum of one thousand one hundred forty-nine and 75-100 ($1149.75) dollars and would have sold upon the market at said place for said sum but in the condition they were in when delivered they were only worth on the market at said place the sum of one hundred fifty-seven and 50-100 ($157.50) dollars and only sold upon the said market for that sum.

That by reason of all the matters herein set forth plaintiff has been damaged in the sum of nine hundred ninety-two and 25-100 ($992.25) dollars.

That said claim is still the property of plaintiff.

Wherefore the plaintiff demands judgment against the defendant for the sum of nine hundred ninety-two and 25-100 ($992.25) dollars with interest at six per cent from March 23, 1910, and costs of suit.

And on the 28th day of September, 1910, defendant filed in the court below its amended and substituted answer as follows:

Comes now the defendant and for amended and substituted answer to plaintiff's petition states.

Count I.

3 That it is a corporation engaged in the business of a common carrier and operating a line of railway between Galt, Iowa, and Chicago, Illinois.

That on or about the 22d day of March, 1910, the plaintiff delivered to the defendant, at Galt, Iowa, sixty head of hogs to be transported by said defendant to the Union Stock Yards, Chicago, Illinois. That prior to the date the said hogs were so delivered the plaintiff and defendant entered into a written contract which provided, among other things, that the plaintiff shall assume all risk and expense for feeding, watering, bedding and otherwise caring for said hogs, while in cars, yards, pens and elsewhere and shall load and unload said hogs at his own expense and risk. Said written contract also provided that the hogs in question should not be transported within any specified time or delivered at destination at any particular hour or in season for any particular market. A copy of said contract is hereto attached, marked exhibit "A" and made a part of this answer.

Defendant states that plaintiff, in pursuance of said written contract bedded the said car and loaded the said hogs without the assistance of any officer or agent of this defendant, and in the absence of the officers and agents of this defendant.

That the plaintiff negligently bedded said car with a large amount of straw. That plaintiff was further negligent in overloading said car. That because said car was overloaded by plaintiff, without the knowledge of any officer or agent of this defendant and because he bedded the same with a large amount of straw, unknown to this defendant at that time, this caused the hogs to be overheated which resulted in the death of 30 of said hogs. That the death of said hogs

was caused by plaintiff's negligence in overloading said car in which said hogs were contained, and by his negligence in bedding the car with a large amount of straw and was not caused by any negligence or failure of duty on behalf of defendant.

Count II.

Further answering, defendant states that under the laws of the United States, known as the Interstate Commerce Act, common carriers are required to prepare and file a schedule of rates, setting forth all of the charges for transporting any article, also setting out in detail the services to be rendered for such charges, or, in other words, the value of the services to be rendered, for said charges. That the value of said service to be rendered depends among other things, upon the value of the article to be transported or the amount of liability the carrier assumes in undertaking to carry a given article. That the tariff rates when filed by a common carrier in which are set forth the charges for carrying any article and the services to be rendered by the carrier including the amount of liability it would assume, are, in effect, a law which cannot be departed from by the carrier or shipper and the only tribunal that has power to suspend the operation of such a rate or change the amount of liability assumed by the carrier in undertaking to carry a given article is the Interstate Commerce Commission. That the state courts have no jurisdiction or authority to change a rate duly filed and published under the Interstate Commerce Act or to change the amount of liability assumed by a carrier and published in such tariff rates.

That at the time the plaintiff shipped the hogs in question, the defendant had on file with the Interstate Commerce Commission and on file at Galt, Iowa, its tariff rates on hogs as required by law. That in said tariff rates so filed and in force at the time this shipment was made there were specified therein two rates over defendant's line of railway from Galt, Iowa, to Chicago, Illinois; one where the value of the hogs did not exceed ten dollars per head and the other
4 rate which was higher, where the value of the hogs exceeded ten dollars per head. It was expressly provided in said tariff rates so filed and in force at the time the shipment was made that where hogs were shipped under the lower rate, in case of total loss of any of such hogs, the defendant's liability should not exceed ten dollars per head. That said tariff rates were open to the inspection of the public and plaintiff selected the lower rate and entered into a written contract with said defendant which provided that in case of total loss of any of said hogs for which the defendant might be liable, payment therefor was to be made on the basis of the actual value at the time and place of shipment, but in no case should the defendant's liability exceed ten dollars per head. Said contract further provided that in making said contract the under-signed owner of the stock named herein expressly acknowledged that he had the option in making said contract under the tariff rates either at the carrier's risk or upon a limited liability and that he had selected the rate and liability named herein and expressly accepts and agrees to

all the stipulations and conditions herein named, a copy of said contract is hereto attached, marked exhibit "A," and made a part of this answer.

That said tariff rates under which this shipment was made were binding upon both the defendant and the plaintiff and neither were at liberty to disregard said tariff rates without violating the law and being subject to prosecution by the United States Government. This court has no authority or jurisdiction to change said tariff rates by changing the amount of liability that the defendant assumed under said tariff rates at the time the hogs in question were shipped. That the recovery of the plaintiff, if he is entitled to recover, is limited to ten dollars per head for each hog.

Count III.

The defendant further answering states that it kept on file with the Interstate Commerce Commission and on file at Galt, Iowa, from where these hogs were shipped, its tariff rates as required by law. That said tariff rates, duly published as required by law, gave the plaintiff a choice of two rates: one rate where the value of the hogs was ten dollars or less and a higher rate where the value of the hogs exceeded ten dollars. The defendant states that the plaintiff in order to secure the transportation of hogs in question at less than the published tariff rates, wrongfully represented that the value of the hogs in question did not exceed ten dollars per head and that plaintiff signed the contract marked exhibit "A," a copy of which is hereto attached, and represented therein that the value of the hogs therein did not exceed ten dollars per head, when, as a matter of fact, the value of said hogs, at the time was much in excess of ten dollars per head, which fact was known to the plaintiff at the time said valuation was given and was not known to the defendant. That no officer or agent of the defendant at that time had seen the hogs and had no knowledge as to the value of said hogs in question, except that obtained from the contract herein.

That the hogs in question were transported at the lower rate based on a valuation not exceeding ten dollars per head; that plaintiff is not entitled to recover more than ten dollars for each hog and he is estopped from claiming that the value of the hogs in question at the time of shipment was more than ten dollars per head.

That the defendant further states that under the terms of the contract under which the shipment was made, the recovery of the plaintiff is limited to the sum of ten dollars for each animal and states that plaintiff cannot, in any event, recover more than said amount.

5 As to all other allegations in plaintiff's petition contained not herein admitted, the defendant denies the same.

Wherefore, it asks to be dismissed with its costs.

(EXHIBIT "A.")

Rock Island Lines.

The Chicago, Rock Island & Pacific Railway Co. Live Stock Contract.

Instructions to Agents, Conductors and Shippers.

Live Stock in quantities less than a full carload will be charged for on basis of estimated weights as per current classification.

When carload rates are shown per 100 lbs. they are subject to the regular established minimum weights as shown in tariffs.

This contract when executed by shipper and agent and indorsed by the person or persons in charge of one or more carloads, and same certified to in ink by the agent, will entitle such person or persons to ride on same train with stock, to care for same, and is the authority for conductor to pass them.

Conductor must punch and fill in blank spaces on back, when honoring this contract for transportation of men in charge of stock.

Agents will permit only the names of the owners or bona fide employés who accompany the stock, to be entered on the back of the contract, without regard to passes allowed by number of cars.

As a means of identification, the agent issuing this contract will indicate with L punch marks in column 1 in the marginal space shown hereon, the personal description of attendant in charge of the Live Stock covered by this contract. Should contracts carry more than one attendant in charge, agents will punch description in additional columns (2 and 3) care being taken to have description coincide with parties whose names appear on back of contract.

For rules governing question of transportation of Live Stock attendants, see tariff.

Agents of this Company are not authorized to agree to forward Live Stock to be delivered at any specified time, or for any particular market.

After shipments have been properly way-billed agents of this Company must send the duplicate contract by first passenger train mail to C. G. Weaver, Auditor of Freight Traffic, Chicago, Ill.

Agents of this company must sign this contract in duplicate.

Live Stock Contract.

No. of Cars	Initials	Way Bill No
1306	SAAP	26

Executed in duplicate at Galt, Ia., Station, Mch. 22, 1910. This agreement, Made between the Chicago, Rock Island & Pacific Railway Co., of the first part, and J. Cramer, of the second part, Witnesseth, That for the consideration and the mutual covenants and conditions herein contained, the said first party will transport for the

said second party the Live Stock described below, and the parties in charge thereof, as hereinafter provided, viz:

.....One.....Cars, said to contain .....Hogs.....head of ..... from .....Galt, Ia.,.....Station, to .....U. S. Yards Ills.....Station, consigned to.....W. W. Wilson & Co..... .....at the rate of ..... per .....from ..... 6 to.....subject to minimum weights and length of cars specified, and provided for in Tariff; said rate being less than the rate charged for shipments transported at Carrier's Risk, for which reduced rate and other considerations it is mutually agreed between the parties hereto, as follows:

First. It is mutually agreed that if the destination of the aforesaid cars be on the line of the Chicago, Rock Island & Pacific Railway Company, then the Chicago, Rock Island & Pacific Railway Company agrees to deliver same to consignee after payment of charges and surrender of this contract; but if the destination of such cars be beyond the line of the Chicago, Rock Island & Pacific Railway, then the Chicago, Rock Island & Pacific Railway Company agrees, and it and each connecting carrier in turn is hereby authorized to deliver said cars to its connecting carrier for transportation under the terms, stipulations, limitations and agreements herein contained, and each and every carrier receiving said cars for transportation shall be deemed to adopt the terms and conditions hereof and assume the like liabilities, and shall be entitled to all the provisions, exemptions from and limitations of liability and other stipulations governing the measure and adjustments of damages herein contained; it being understood and agreed that the duty and liability of the Chicago, Rock Island & Pacific Railway Company and that of every other carrier transporting said cars hereunder absolutely ceases and terminates upon delivery by it of said cars to its connecting carrier. The Chicago, Rock Island & Pacific Railway Company, in fixing and guaranteeing through rates to a point beyond its own line, acts only as agent for the connecting line or lines, and in no case, and under no circumstances, shall the Chicago, Rock Island & Pacific Railway Company be held liable for any injury to or loss of the stock transported hereunder, from any cause whatsoever, happening or accruing beyond its own line, and in the event of injury to or loss of said stock, only the carrier on whose line the injury or loss actually occurs shall be liable.

Second. That the Live Stock covered by this contract is not to be transported within any specified time, nor delivered at destination at any particular hour, nor in season for any particular market.

Third. That the first party shall be exempt from liability for loss or damage to the person or persons and property covered by this contract, arising from derailment, collision, fire, escapement from car, heat, suffocation, overloading, crowding, maiming or other accidents or causes unless the injuries arising from said causes are the direct result of negligence on the part of the carrier.

Fourth. That the second party shall assume all risk and expense of feeding, watering, bedding, and otherwise caring for the Live

Stock covered by this contract, while in cars, yards, pens or elsewhere, and shall load and unload the same at his own expense and risk.

Fifth. That the first party shall be exempt from all liability for loss or damage to the person or persons or property covered by this contract, caused by mobs, strikes, or threatened or actual violence from any source.

Sixth. That as a condition precedent to the bringing of any suit for damages for any loss or injuries to the person or persons or property covered by this contract, the claimant shall give notice in writing of the claim for such damages to some general officer, claim agent or station agent of the said first party not later than ninety (90) days after the date of the loss or injury claimed, and a failure to strictly comply with this provision shall be a bar to a recovery of any and all damages occasioned to the person or persons or property embraced in this contract.

7 Seventh. That as a condition precedent to claiming or recovering damages for any loss or injury to or detention of Live Stock, or delay in transportation thereof, covered by this contract, the second party, as soon as he discovers such loss or injury, shall promptly give notice thereof in writing to some general officer, claim agent or station agent of the first party, or to the agent at destination or to some general officer of the delivering line, before such stock is removed from the point of shipment or from the place of destination, as the case may be, and before such stock is mingled with other stock; and such written notice shall in any event be served within one day after delivery of the stock at its destination, in order that such claim may be fully and fairly investigated. It is agreed that a failure to strictly comply with all the foregoing provisions shall be a bar to the recovery of any and all such claims.

Eighth. That in case of total loss of any of the Live Stock covered by this contract from any cause for which the first party may be liable, payment will be made therefor on the basis of the actual cash value at the time and place of shipment, but in no case to exceed $100.00 for each horse, pony, gelding, mare or stallion, mule or jack; $50.00 for each ox, bull or steer; $30.00 for each cow; $10. for each calf or hog; $3.00 for each sheep or goat, and in case of injury or partial loss, the amount of damage claimed shall not exceed the same proportion.

Ninth. That this contract does not entitle the holder thereof, or any other person, to ride on any train except on train in which the Live Stock is transported, and then only for the purpose of caring for such live stock, nor to return passage from.....to.....unless return passage is authorized under the rules appearing in tariffs of said party of the first part, which are hereby made a part of this contract, and unless this contract is presented to the properly authorized agent of the first party for return pass within the time prescribed by the rules of said Railway Company, all of which is hereby made a part of this contract.

Tenth. That such return pass, the issuance of which is authorized only in the manner set forth above, shall be used by such person or

persons only whose names are written herein.....
.....and who actually accompanied the Live Stock for the purpose of caring therefor, and shall not include women, infants or other persons unable to perform the service of caring for Live Stock in transit, as required by this contract; and persons entitled to return passage under the terms of this contract shall perform the journey within the time and in accordance with the regulations of the party of the first part, as shown on such pass, all of which is hereby made a part of this contract.

Eleventh. That the person or persons in charge of Live Stock covered by this contract shall remain seated in the caboose car attached to the train while the same is in motion, and that whenever such person or persons shall leave the caboose car, or pass over or along the cars or track, they shall do so at their own risk of personal injury from every cause whatever, and that the said first party shall not be required to stop or start its trains or caboose cars from depots or platforms, or to furnish lights for the accommodation or safety of such persons.

Twelfth. That the second party hereby releases and waives any and all cause for action for damages that may have accrued to him by any written or verbal contract prior to the execution hereof.

Thirteenth. That in case the Live Stock mentioned herein is to be transported over the road or roads of any other Railroad
8 Company, the first party shall be released from liability of every kind after said Live Stock shall have left its road, the understanding of both parties hereto being that the party of the first part shall not be held or deemed liable for anything beyond the line of its road, excepting to protect the through rate of freight named herein.

Fourteenth. That no person other than the owner of the stock shipped, or his duly authorized agent, in the name of the owner, shall be allowed to sign this contract.

Fifteenth. That no suit or action against the first party for the recovery of any claim by virtue of this contract shall be sustainable in any court of law or equity, unless such suit or action be commenced within six months next after the cause of action shall occur; and should any suit or action be commenced against the first party after the expiration of six months, the lapse of time shall be constituted conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding.

Sixteenth. If the Live Stock shipped under this contract is delivered at the Union Stock Yards, Chicago, Ill., then and in that event an additional charge will be made to the rate herein named, or to the regular rate applying between point of origin and Chicago, Ill., of $2.00 per car.

Seventeenth. That in making this contract, the undersigned owner, or other agent of the owner, of the stock named herein expressly acknowledges that he has had the option of making this shipment under the tariff rates either at carrier's risk or upon a limited liability, and that he has selected the rate and liability named herein, and expressly accepts and agrees to all the stipulations and conditions herein named.

Eighteenth. This contract is executed in duplicate, one part to be retained by the Railway Company, the other to be delivered to the shipper, and each of said parts, whether designated "Original" or "Duplicate," is understood and declared to be of equal force and effect with the other as evidence, and for all other purposes, and in all senses, is an original contract.

Nineteenth. That the evidence that the said second party, after fully understanding and accepting all the terms, covenants and conditions of this contract, including the provisions on the back hereof, and that they all constitute a part hereof, fully assents to each and all of the same, is his signature hereto.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.
J. CRAMER, *Owner and Shipper.*

Witness:
W. B. GAVIN,
Its Agent.

And on the 25th day of October, 1910, plaintiff filed in the court below its demurrer as follows:

Comes now the plaintiff and demurs to the first division of the amendment to defendant's answer.

1. Because the terms and provisions of the contract referred to in said count the defendant undertook to limit its liability for the transportation of said stock and is in violation of the statute and not binding on the plaintiff and said contract is void.

9 2. Because the contract set out in said count is in violation of the statute and is void in that by the said contract the defendant undertook and provided in said contract a limitation upon its liability for the transportation of said stock.

II. Demurs to the second division of the amendment to defendant's answer.

1. Because by the terms of the contract between plaintiff and defendant referred to in said count, the defendant undertook to limit its liability as common carrier of the stock in question and said contract was in violation of the statute and void and not binding on the plaintiff.

2. Because the contract referred to in said count limits the liability of defendants as common carriers of the stock in question and is in violation of the statute and is void and constitutes no defense in this action.

III. Plaintiff demurs to the third division of defendant's amendment to the answer.

1. Because if the plaintiff wrongfully represented the value of the hogs to be transported to secure a less rate, the contract entered into between him and defendants by which such rate was secured, was in violation of the statute and void.

2. Because the contract referred to in said count limits the liability of defendants as common carriers of the stock to be transported and is in violation of the statute and no fraud or wrongful representation by the plaintiff as to the value of said stock could give vitality

to said contract, and said contract is void and not binding upon the defendant.

And on the 26th day of October, 1910, the court below overruled plaintiff's demurrer to the first count of defendant's amended and substituted answer and sustained said demurrer to the second and third count of defendant's answer, to all of which, the defendant, at the time, duly excepted.

And on the 26th day of October, 1910, this cause of action was tried by the court below upon the issues as presented in plaintiff's petition and count one of defendant's amended and substituted answer, which trial resulted in a finding for the plaintiff in the sum of $828.00, for which amount and for costs, the court entered judgment against the defendant and in favor of the plaintiff, to all of which, the defendant, at the time, duly excepted.

That on the 3d day of December, 1910, the defendant ap-
10 pealed from the judgment and order of the court below, to the Supreme Court of Iowa by serving upon the attorney for plaintiff and the clerk of the district court of Wright County, Iowa, a notice of appeal as provided by statute, and by securing to the clerk of said court his fees for transcript herein; which notice of appeal was filed in the office of the clerk of the district court of Wright County, Iowa, in said cause, on the 3d day of December, 1910.

That the above and foregoing is a full, true and correct abstract and transcript of the record in said cause and contains all the records therein, all the rulings of the court made therein and exceptions taken.

CARROLL WRIGHT,
J. L. PARRISH, AND
LADD & ROGERS,
Attorneys for Appellant.

Notice is hereby given that counsel for appellant will ask to be heard in oral argument upon the submission of said cause.

CARROLL WRIGHT,
J. L. PARRISH,
Attorneys for Appellant.

We hereby certify that the cost of printing the foregoing abstract was the sum of $8.80.

CARROLL WRIGHT,
J. L. PARRISH,
Attorneys for Appellant.

11 In the Supreme Court of Iowa, September Term, 1911 (Second Period).

Filed Nov. 20, 1911.

27976.

JELSKE CRAMER, Appellee,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO., Appellant.

Appeal from Wright County District Court.

Hon. Chas. E. Albrook, Judge.

Action at law to recover for damages done to a shipment of hogs over defendant's road from Galt, Iowa, to Chicago, Illinois. Many defenses were interposed to some of which plaintiff demurred. This demurrer was sustained in part and overruled in part and the case was tried, resulting in a judgment for plaintiff in the sum of eight hundred twenty eight dollars. Defendant appeals.

Carroll Wright, J. L. Parrish and Ladd & Rogers for Appellant; Nagle & Nagle for Appellee.

DEEMER, *J.*:

The appeal presents but a single question. Defendant pleaded as a partial defense certain stipulations in the bill of lading issued to plaintiff for the care of hogs, reading as follows:

"Eighth. That in case of total loss of any of the live stock covered by this contract from any cause for which the first party may be liable, payment will be made therefor on the basis of the actual cash value at the time and place of shipment, but in no case to exceed $100.00 for each horse, pony, gelding, mare, or stallion, mule or jack; $50.00 for each ox, bull or steer, $30.00 for each cow; $10.00 for each calf or hog. $3.00 for each sheep or goat, and in case of injury or partial loss, the amount of damage claimed shall
12 not exceed the same proportion.

"Fourteenth. That no person other than the owner of the stock shipped, or his duly authorized agent, in the name of the owner, shall be allowed to sign this contract.

"Seventeenth. That in making this contract the undersigned owner, or other agent of the owner, of the stock named herein expressly acknowledges that he has had the option of making this shipment under the tariff rates either at carrier's risk or upon a limited liability and that he has selected the rate and liability named herein, and expressly accepts and agrees to all the stipulations and conditions herein named.

"Nineteenth. That the evidence that the said second party, after fully understanding and accepting all the terms, covenants and conditions of this contract, including the provisions on the back hereof,

and that they all constitute a part hereof, fully assents to each and all of the same, is his signature hereto."

These stipulations were expressly made part of the consideration for the rate and the contract provided that; "Said rate being less than the rate charged for shipments transported at carrier's risk, for which reduced rate and other considerations it is mutually agreed between the parties hereto, as follows:"

Based upon these stipulations and agreements defendant pleaded the following defenses:

"That at the time the plaintiff shipped the hogs in question, the defendant had on file with the Interstate Commerce Commission and on file at Galt, Iowa, its tariff rates on hogs as required by law. That in said tariff rates so filed and in force at the time this shipment was made there were specified therein two rates over defendant's line of railway from Galt, Iowa, to Chicago, Illinois; one where the value of the hogs did not exceed ten dollars per head and the other rate which was higher, where the value of the hogs exceeded ten dollars per head. It was expressly provided in said tariff rates so filed and in force at the time the shipment was made that where hogs were shipped under the lower rate, in case of total loss
13 of any of such hogs, the defendant's liability should not exceed ten dollars per head. That said tariff rates were open to the inspection of the public and plaintiff selected the lower rate and entered into a written contract with said defendant which provided that in case of total loss of any of said hogs for which the defendant might be liable, payment therefor was to be made on the basis of the actual value at the time and place of shipment, but in no case should the defendant's liability exceed ten dollars per head. Said contract further provided that in making said contract the undersigned owner of the stock named herein expressly acknowledged that he had the option in making said contract under the tariff rates either at the carrier's risk or upon a limited liability and that he had selected the rate and liability named herein and expressly accepts and agrees to all the stipulations and conditions herein named, a copy of said contract is hereto attached, marked exhibit "A" and made a part of this answer.

"That said tariff rates under which this shipment was made were binding upon both the defendant and the plaintiff and neither were at liberty to disregard said tariff rates without violating the law and being subject to prosecution by the United States government. This court has no authority or jurisdiction to change said tariff rates by changing the amount of liability that the defendant assumed under said tariff rates at the time the hogs in question were shipped. That the recovery of plaintiff, if he is entitled to recover, is limited to ten dollars per head for each hog.

Count III. The defendant further answering states that it kept on file with the Interstate Commerce Commission and on file at Galt, Iowa, from where these hogs were shipped, its tariff rates as required by law. That said tariff rates, duly published as required by law, gave the plaintiff a choice of two rates: one rate where the value of the hogs was ten dollars or less and a higher rate where the

value of the hogs exceeded ten dollars. The defendant states
14 that the plaintiff in order to secure the transportation of hogs in question at less than the published tariff rates, wrongfully represented that the value of the hogs in question did not exceed ten dollars per head and that plaintiff signed the contract marked exhibit "A", a copy of which is hereto attached, and represented therein that: the value of the hogs therein did not exceed ten dollars per head, when as a matter of fact, the value of said hogs, at the time was much in excess of ten dollars per head, which fact was known to the plaintiff at the time said valuation was given and was not known to the defendant. That no officer or agent of the defendant at that time had seen the hogs and had no knowledge as to the value of said hogs in question, except that obtained from the contract herein.

"That the hogs in question were transported at the lower rate based on a valuation not exceeding ten dollars per head; that plaintiff is not entitled to recover more than ten dollars for each hog and he is estopped from claiming that the value of the hogs in question at the time of shipment was more than ten dollars per head.

"That the defendant further states that under the terms of the contract under which the shipment was made, the recovery of the plaintiff is limited to the sum of ten dollars for each animal and states that plaintiff cannot, in any event, recover more than said amount."

The demurrer to these divisions of the answer was sustained and the appeal challenges the ruling. Our Code Sec. 2074, provides that: "No contract, receipt, rule or regulation shall exempt any railway corporation engaged in transporting persons or property from the liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule or regulation been made or entered into."

This section has heretofore been held applicable to such provisions as are relied upon by appellant and the Supreme Court of the United States has held that the state, in virtue of its reserved, or
15 police power, had authority to enact such a rule even though the shipment be inter-state in character. See: Solan v. R. R. 95, Iowa, 260. Lucas v. R. R. 112 Iowa, 594. Winn v. Am. Ex. Co. 128 N. W. R. 663: Also C. M. & St. Paul R. R. v Solan, 169 U. S. 133, and Penn R. R. v. Hughs, 191 U. S. 477. It is now argued with apparent confidence that the Interstate Commerce Act with its amendments prior to the one of June 18th, 1910, has so changed the situation that we should now hold the section of the code inapplicable to inter state shipments and say once for all that as our construction of it affects the published rates approved by the Inter State commerce commission we should now abandon the rule announced in the Solan and other like cases. The fundamental proposition relied upon for this conclusion is that as congress has now acted upon the subject the several states have no further control of the matter and that the rates approved by the Inter State Commerce Commission must control. The difficulty with this proposition is co-nsels' inability to point to any act of congress which undertakes to validate any such provision and stipulations as are relied

upon by appellant. Such contracts as these have been held invalid by this court because exempting a carrier from an implied liability growing out of its undertaking to carry the property, and in previous cases it has been said that such exemptions are contrary to public policy and void at common law. See cases heretofore cited. Upon this proposition there is conflict in the authorities, however, and the Supreme Court of the United States has adopted a contrary rule. See: Hart v. R. R. 112 U. S. 331. But practically all of the courts, including the Supreme Court of the United States, have held such a statute as is found in our code as Sec. 2074, within the reserved or police powers of the state, and not such a regulation in inter state commerce as to be inhibited by the Federal Constitution. See cases hitherto cited. We have no doubt of the power of congress to legislate upon this matter of limiting liability or to give full rec-
16 ognition and validity to such contracts; but counsel for appellant have failed to point out any act of congress which does so. Our own reading of the inter state commerce Act fails to disclose any such provisions. It is not enough, as we think, that congress has acted in the matter of inter state shipments, and assumed control thereof. That had been done when the Solan and the Hughes cases, supra, were announced. Definite action in recognition of such contracts as are here relied upon was necessary. No such express legislation is found and appellant is driven to the necessity of finding recognition of such contracts by implication. The defendant seeks to limit its liability to the sum fixed in the contract because of the shipper's agreement and it is contended that the inter state commerce commission authorized the making of such contract in approving the rates filed by the company with the commission. It is alleged in the answer that the defendant had two rates for the shipment of stock, each fixed upon the valuation of the property the low one being given to plaintiff because of the stipulations fixing the amount of liability and the other a higher one charged where there was no such limitation or valuation placed upon the property shipped. Concession must here be made, that under the decisions of many courts such a contract is valid and binding and fixes the amount of the shipper's recovery. See cases cited in Vol. 4 Elliott on R. R. Sec. 1510. As our rule differs from that announced by many of the courts, and as the construction and effect to be given our statutes is not one of general law, but for the courts of each jurisdiction, we must hold the provisions relied upon invalid, unless it be found that congress has expressly or by necessary implication approved such stipulations in contract relating to inter state shipments. Davis v. R. R. 93 Wis. 470; 57 Am. St. Rep. 935. There is no express act of congress upon the subject; but it is claimed that the interstate commerce commission, acting for the government has, in virtue of its authority over the subject, approved such contracts and that the state legislation upon the subject has thereby been abro-
gated. This, to our minds, is the pivotal point in the case.
17 Counsel contend that to give force to our statute is to change a rate of freight authorized by the interstate commerce commission. If that were all of the case we should be inclined to agree with this contention. But it is provided in an amendment to Section

20 of the inter state commerce act, found in the U. S. Comp. St. Supp. 1909, page 1187; "That any common carrier, railroad or transportation company, receiving property for transportation, from a point in one state, to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof, for any loss, damage, or injury to such property caused by it, or by any common carrier, railroad or transportation company to which such property may be delivered, or over whose line or lines such property may pass, and no contract, receipt rule or regulation shall exempt such common carrier, railroad or transportation company to which such property may be delivered, or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad or transportation company from the liability hereby imposed. Provided: That nothing in this section shall deprive any holder of such receipt or bill of lading, of any remedy or right of action, which he has under existing laws. That a common carrier, railroad or transportation company issuing such receipt of bill of lading shall be entitled to recover from the common carrier, railroad or transportation company on whose lines the loss, damage or injury shall have been sustained, the amount of such loss, damage or injury, as it may be required to pay to the owners of such property, as may be evidenced by any receipt judgment or transcript thereof."

Again Section 9 of the inter state commerce act provides: That any person, or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such carrier may be liable under the provisions of this act, in any District Court of the United States of competent jurisdiction;
18 but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods herein provided for, he or they will adopt."

It seems to us that the amendment just quoted makes the initial carrier liable for all damages sustained and that this liability cannot be affected by any contract, rule or obligation. We concede, however, that these amendments are not controlling upon the proposition here involved and we cite them to show that in so far as congress had acted, prior to June 18th, 1910, there was no attempt to vitalize such contracts as are here involved. We do not understand that the inter state commerce commission approves and adopts all rates and conditions contained in any schedule of rates filed by a common carrier. At the time when the shipment in question was made the inter state commerce commission had no authority to fix rates for future shipments. It did have power, however, to determine upon the reasonableness of rates when that question was brought before it. Inter State Com. v. Ala. R. R. 168, U. S. 144: I. S. C. C. v. Cin. R. R. 167 U. S. 479. But it had no power to issue general orders in relation to carriers

Tex. R. R. v. I. S. C. C. 162, U. S. 197.

From the mere fact that the defendant company filed its schedule of rates as required by law, no inference arises that the commission agreed to these rates or to all the proposed conditions of shipment. This rule is imperative as we think when applied to contracts or conditions against public policy or contrary to the general law. It is said that the commission has given its sanction to valuation clauses, such as the one relied upon in various cases; but it is not contended that it has ever approved the one relied upon by appellant, and there is reason to believe that it will not give its sanction to such a valuation as is relied upon in the instant case. That valuation is arbitrary, is one fixed by the carrier, on its own motion and gives the shipper no other option than to agree upon a valuation not exceeding ten dollars per head or pay a higher rate, which is not shown by the answer to be reasonable. Generally speaking those courts
19 which have approved limitations as to the amount of recovery in case of loss—have done so upon the theory that there has been a bona fide agreed valuation between the shipper and the carrier based upon the rate to be charged and not a mere arbitrary limitation to a stipulated amount. See: U. S. Co. v. Backman, 28 Ohio St. 144. Hart v. R. R. 112, U. S. 331. Kansas R. R. v. Simpson, 30 Kans. 645, 2 Pac. 821. Moulton v. St. Paul R. R. 31 Minn. 85, 16 N. W. R. 597; Georgia R. R. v. Kenner, 93 Ga. 808, 21 S. E. 287, 44 Am. St. Rep. 197. An eminent text writer has stated the rule, as we understand it, in the following language: "Where, however, the valuation is an arbitrary one made by the carrier, or the latter thus seeks to escape liability for its own negligence beyond the amount fixed, and such amount is obviously much less than the true value of the goods, a different question arises; An arbitrary and unreasonable limitation inserted in a bill of lading by the carrier, without any request or notice to the shipper and without consideration or an opportunity to obtain a lower rate of freight in consideration thereof, is not binding upon the shipper. Some of the authorities cited in support of this proposition go still further and seem to hold that the valuation must be made by the shipper, but there is conflict upon this point, and it is held in a leading case and others which follow it, that it is immaterial whether the shipper fixes the value or not, so long as he agrees to it by accepting the bill of lading without objection. The most stubborn conflict among the authorities, however, is upon the question of the validity and effect of such a valuation and limitation where the carrier is guilty of negligence. But we believe that most of the apparently conflicting decisions can be reconciled in accordance with the following rules. 1. A bona fide contract, fairly made, in advance, upon sufficient consideration, fixing the value of the property or the rule for ascertaining its value in case of loss or injury, even if the carrier is guilty of negligence, is valid
20 and enforceable, and, if based upon a lower rate of freight in proportion to the decreased liability, "will be upheld as a proper and lawful mode of securing a due proportion between the amount for which the carrier may be responsible and the freight he receives, and of protecting himself against extravagant and fanciful valuation." 2. A stipulation arbitrarily limiting the amount of recovery, in case of the negligence of the carrier, without regard to the

value of the property is invalid, except, perhaps, in the few jurisdictions in which a carrier can contract for an exemption from liability for its own negligence. 3. The agreement as to value must be made in good faith and not forced upon the shipper by unreasonable rates for a higher valuation. 4. A carrier may make reasonable regulations, graduating its compensation according to the value of the property and requiring a disclosure of such value for the purpose of fixing its compensation, and providing that, in case of the failure of the shipper to disclose the value as required, it shall be deemed not to exceed a certain specified sum. 5. If the shipper, upon inquiry duly made by the carrier as to the value of the goods, gives a false valuation, in order to obtain reduced rates, and deceives the carrier thereby, he will be estopped by his fraud from claiming and recovering any greater amount in case they are lost or injured." 4 Elliott on Railroads, Sec. 1510. But we need not speculate upon this for it is not contended that the stipulations in question have ever been approved by the commission. It will be observed that the action is bottomed upon negligence and that for present purposes it must be assumed that the loss which plaintiff suffered was due to defendant's negligence. It must also be assumed that the carrier arbitrarily fixed the maximum value of the animals shipped and that the shipper had no option but to accept this arbitrary valuation or to pay a higher rate. The reasonableness and justness of this higher rate is not shown, but assumed without any showing of record as to what it is. Consideration should also be given to the fact that it is not an action in which any complaint is made of the rate
21 as fixed. The gist of the complaint is defendant's failure to perform its common law and statutory duty—that is to say, negligence. Fundamentally defendant is relying upon a contract limiting its liability for that negligence and in order to do so it must present such a contract as the courts will approve. The principal case relied upon by appellant is far from being conclusive. The case was an action to recover for alleged overcharge and for exactions which were alleged to be unreasonable, and the opinion written by the present Chief Justice is far from controlling on the proposition now before us. That case is: Tex. R. R. Co. vs. Abilene Co. 204 U. S. 426. That decision, it seems to us, goes no farther than to hold that a shipper cannot maintain an action to obtain relief from an alleged unreasonable freight rate exacted from him for an inter state shipment, where such rate has been filed with the inter state commerce commission, and promulgated as provided by the act to regulate commerce. The question in the instant case is not one primarily of rates but of the right of the carrier to limit its liability for negligence. Of course it is premissible to draw analogies from the cited case; but there is nothing in the decision which holds to the doctrine that the inter state commerce commission has either expressly or impliedly ratified and approved such contracts as are here involved. Our conclusions find support in Latta *c.* St. P. M. & O. R. R. 172 Fed. 850. II. It is argued, however, that our construction of the law affords a ready means whereby rebates may be offered to shippers, and that for this reason it should not be adopted.

This argument, while plausible, is not persuasive. Of course there are many devices which might be adopted in order to avoid the law against rebates and discriminations, but it seems to us that in upholding the stipulations relied upon in this case we would point the way to unlawful discrimination in rates quite as effectively as by denying the validity thereof. It must be assumed in solving the question now before us that plaintiff suffered a loss to the extent claimed, and that defendant is relying upon a contract limiting its liability for such loss. No rebate is being granted to the
22 shipper, either directly or inferentially. Compensation for his l[illegible]s is all he seeks and is all that has been awarded. No discrimination was intended in granting him the rate which was charged, and even if that had been the intent we doubt whether the defendant is in position to avail itself of such discrimination in an action against it for negligence. Even if fraud on the part of the shipper is charged it is unavailing under the rule announced in Winn v. U. S. Exp. Co., Supra. See also Betus v. R. R. 129, N. W. R. 962. It is not alleged that the rate given the plaintiff was discriminatory in character or that it was unreasonable. The sole defense is that he agreed to a limitation upon the carrier's liability in case of injury to the property, even if such injuries were due to negligence and it is argued that such agreement is good because the interstate commerce commission approved thereof or so treated the schedule filed as to ratify not only the rate, but all proposed stipulations and agreements contained in the contracts entered into between the carrier and the shipper or embodied in the bill of lading issued by the railroad company. There is, as we think, no merit in the contention that a rebate or concession has been granted to the shipper. Cases relied upon by appellant in support of its present contention are not in point.

III. Suggestion is made that our construction of the law gives to plaintiff a less rate than that required by law, due to the filing of defendant's schedules of rates. For some purposes this may be assumed, but it does not follow that the penalty is a forfeiture on the part of plaintiff of all damages sustained by him or necessarily limit the amount of recovery. The thought is of course worthy of consideration in arriving at a proper decision as to the effect to be given the stipulations in question, but it is not controlling. After all is said we think the inquiry is limited to a question of law independent of the schedules filed. If the stipulations relied upon are invalid, either by statute or at common law, and if the state has power to enact such a statute as Section 2074 of our code, then it must
23 be assumed that the inter state commerce commission did not approve of the conditions or limitations contained in the defendant's bill of lading or shipping contracts. Congress had not assumed to legislate upon the subject of the legality of these contracts and the field is open to state action, unless the inter state commerce act is to be so construed as to forbid all action by the states with reference to the validity of contracts entered into by shippers and carriers within their jurisdiction. We do not believe that this construction should be placed upon the inter state commerce act and it is certainly true that the Supreme Court of the United States has not yet an-

nounced such a doctrine. That the Congress of the United States might do so in all cases of inter state shipment we have no doubt; but until it does the matter is unquestionably left to state control. Finally it must be remembered that the question of rates for an inter state shipment is only incidentally involved; that the action is not to recover an over charge or to have a readjustment of rates; that the contract provisions relied upon have never been expressly approved by congress or the inter state commerce commission; that the question is one of general law and goes simply to the inquiry, are the conditions and stipulations relied upon valid limitations upon plaintiff's right to recover for negligence. We might well have treated the question as settled by Winn v. Express Co. supra, but the argument now presented contains some new phases which we thought well to consider, and the propositions decided in the Winn case have been elaborated in order to justify the announcement there made. We are willing to concede the force of appellant's argument and to agree that the question is by no means free from doubt. But our former *former* decisions are such that to be consistent we must hold the stipulations limiting liability invalid, contrary to our statute and opposed to sound public policy. It may be that there should
24 be a general rule applicable to all inter state shipments holding such contracts as are relied upon either valid or invalid in order that the extent of liability may not depend upon the place of contract; but this suggestion has no doubt occurred to members of congress and with full knowledge of the conflict in court decisions they have not seen fit to legislate upon the subject. The matter is still open to state action or inaction, and the courts in the several jurisdictions must either uphold or deny the legal efficacy of contracts limiting liability, the conclusion being dependent upon state statutes or upon the view entertained by the particular court of the public policy of such contracts. We are fully committed to the doctrine that such contracts are invalid and we see no reason for holding that this rule has been abrogated by congress or by the inter state commerce commission. The ruling on the demurrer seems to be correct and the judgment must be, and it is

Affirmed.

25 In the Supreme Court of the State of Iowa, Nov. 20, 1911.

27976.

JELSKE CRAMER

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Appellant.

Appeal from Wright District Court.

In this cause, the Court being fully advised in the premises, file their written Opinion Affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below be and it is hereby

Affirmed.

And that a writ of procedendo issue accordingly.

It is further considered by the Court that the Appellant pay the costs of this appeal, taxed at $10.75, and that execution issue therefor.

26 In the Supreme Court of Iowa, September Term, A. D. 1911.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Plaintiff in Error,

vs.

JELSKE CRAMER, Defendant in Error.

Petition for Writ of Error.

Now comes The Chicago, Rock Island & Pacific Railway Company, a corporation, the plaintiff in error, and represents to the court within the trial and determination of the said above entitled cause certain errors that have interfered greatly to the prejudice of the petitioner herein depriving the said petitioner of rights secured to it by the Constitution and laws of the United States, as will more fully appear from the assignment of errors filed herewith and made a part of this petition.

Wherefore, your petitioner prays that a Writ of Error may be allowed herein and that the said Writ of Error may act as a supersedeas of the judgment of this court upon the filing of a bond in an amount to be fixed by this court.

Respectfully submitted,

J. L. PARRISH,
ROBT. J. BANNISTER,
LADD & ROGERS,
Attorneys for Plaintiff in Error.

27 In the Supreme Court of Iowa, September Term, 1911.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Plaintiff in Error,

v.

JELSKE CRAMER, Defendant in Error.

Petition for Writ of Error.

Assignment of Errors.

Now comes The Chicago, Rock Island & Pacific Railway Company plaintiff in error, and assigns error upon the decision and final judgment rendered in this case in the opinion filed herein by the Supreme Court of Iowa on the 20th day of November, 1911, as it appears upon the face of the record in said decision and judgment, in the following particulars:

I.

The Supreme Court of Iowa erred in affirming the judgment of the Trial Court and erred in not reversing the judgment of the Trial Court. The Trial Court sustained the defendant in error's demurrer to Count 2 of plaintiff in error's answer and allowed defendant in error to recover in excess of ten dollars per head for each animal lost, when count 2 of plaintiff in error's answer set up that the recovery of defendant in error, if entitled to recover, is limited to ten dollars per head for each animal, on the ground that it was expressly provided in the tariff or tariffs published and filed in accordance with the Act to Regulate Commerce, as amended, and which contained the rate under which defendant in error's animals were shipped, that plaintiff in error's liability should not exceed ten dollars per head in case of total loss.

II.

The Supreme Court of Iowa erred in not reversing the judgment of the Trial Court. The Trial Court sustained the defendant in error's demurrer to count 2 of plaintiff in error's answer and
28 allowed defendant in error to recover in excess of ten dollars per head for each animal lost, when Count 2 of plaintiff in error's answer set up in substance that the recovery of defendant in error, if entitled to recover, is limited to ten dollars per head for each animal, on the ground that it was expressly provided in the tariff or tariffs published and filed in accordance with the Act to Regulate Commerce, as amended, and which contained the rate under which defendant in error's animals were shipped, that plaintiff in error's liability should not exceed ten dollars per head in case of total loss.

III.

The Supreme Court of Iowa erred in affirming the judgment of the Trial Court. The Trial Court sustained the defendant in error's demurrer to Count 2 of plaintiff in error's answer and allowed defendant in error to recover in excess of ten dollars per head for each animal lost, when Count 2 of plaintiff in error's answer set up in substance that the r-overy of defendant in error, if entitled to recover, is limited to ten dollars per head for each animal, on the ground that it was expressly provided in the tariff or tariffs published and filed in accordance with the Act to Regulate Commerce, as amended, and which contained the rate under which defendant in error's animals were shipped, that plaintiff in error's liability should not exceed ten dollars per head in case of total loss.

IV.

The Supreme Court of Iowa erred in not holding that the Trial Court erred in sustaining defendant in error's demurrer to Count 2 of plaintiff in error's answer. By sustaining said demurrer the Trial Court disregarded and held invalid and of no effect the provision in plaintiff in error's tariff or tariffs filed and published in accordance with the Act to Regulate Commerce, as amended, that

where hogs were shipped under the lower rate under which defendant in error chose to ship his hogs, plaintiff in error's liability in case of total loss of any of said hogs should not exceed ten dollars per head.

29

V.

The Supreme Court of Iowa erred in holding and deciding that the limitation of liability and agreed valuation provisions contained in the tariff or tariffs published and filed in accordance with the Act to Regulate Commerce, as amended, were invalid, as being contrary to Section 2074 of the Code of the State of Iowa.

VI.

The Supreme Court of Iowa erred in holding and deciding that the limitation of liability and agreed valuation provisions contained in the tariff or tariffs published and filed in accordance with the Act to Regulate Commerce, as amended, were invalid, as being opposed to sound public policy.

VII.

The Supreme Court of Iowa erred in holding and deciding that the limitation of liability and agreed valuation provisions contained in the tariff or tariffs published and filed in accordance with the Act to Regulate Commerce, as amended, were invalid, as being opposed to sound public policy and contrary to Section 2074 of the Code of the State of Iowa.

VIII.

The Supreme Court of Iowa erred in holding and deciding that the limitation of liability and agreed valuation provisions contained in the tariff or tariffs published and filed in accordance with the Act to Regulate Commerce, as amended, were invalid.

IX.

The Supreme Court of Iowa erred in that it disregarded and treated as ineffective, the agreed valuation and limited liability provisions in the contract of shipment between plaintiff in error and defendant in error, when said provisions were contained in tariff or tariffs published and filed in accordance with the Act to Regulate Commerce, as amended, and said contract was entered into in accordance with the terms and provisions contained in said tariff or tariffs.

30

X.

The Supreme Court of Iowa erred in holding and deciding that the Trial Court did not err in deciding that defendant in error was not bound by the agreed valuation and released liability provisions contained in its contract with plaintiff in error, when said provisions were contained in the tariff or tariffs, of plaintiff in error, published and filed in accordance with the Act to Regulate Commerce,

as amended, and said contract was entered into in accordance with the terms and provisions contained in said tariff or tariffs.

XI.

The Supreme Court of Iowa erred in holding and deciding that defendant in error was entitled to recover from plaintiff in error for the loss of his animals in excess of the agreed valuation and limited liability provisions contained in his contract of shipment with plaintiff in error, when said contract was a contract for an interstate shipment, and was entered into in accordance with the terms and provisions contained in the tariff or tariffs filed and published in accordance with the Act to Regulate Commerce, as amended, which tariff or tariffs contained said limited liability and agreed valuation provisions.

XII.

The Supreme Court of Iowa erred in holding and deciding that Section 2074 of the Code of the State of Iowa, as applied to the contract between shipper and the carrier for interstate rail transportation, was valid. The validity of the said section of the Code, as applied, was denied, and drawn in question by the plaintiff in error on the ground that when a carrier has inserted in its tariff or tariffs released liability and agreed valuation provisions, and files and publishes said tariff or tariffs in accordance with the Act to Regulate Commerce, as amended, Congress has acted upon such subjects and a State statute repugnant to said provisions is of no force and effect.

31

XIII.

The Supreme Court of Iowa erred in holding and deciding that Section 2074 of the Code of the State of Iowa, as applied to a contract between a shipper and carrier for interstate rail transportation, is valid. The validity of said section was denied and drawn in question by plaintiff in error on the ground that Congress, by the Interstate Commerce Act, as amended, has acted upon the subject of released liability and agreed valuation contracts whenever the tariff or tariffs of a common carrier, filed and published in accordance with the Act to Regulate Commerce, as amended, contained released liability or agreed valuation provisions, or rules and regulations relative thereto.

XIV.

The Supreme Court of Iowa erred in holding and deciding that Section 2074 of the Code of the State of Iowa, as applied to a contract between a shipper and carrier for its interstate rail transportation was valid. The validity of said section of the code as applied was denied and drawn in question by plaintiff in error on the ground that Congress, in making provisions for publishing and filing of interstate tariffs, and the contents thereof, has acted upon the subject of released liability and agreed valuation provisions in interstate rail transportation contracts, whenever the carrier inserts rules and regulations relative to released liability or agreed valuation provisions in said tariff or tariffs.

XV.

The Supreme Court of Iowa erred in holding and deciding that Section 2074 of the Code of the State of Iowa as applied to contracts between a shipper and carrier for interstate rail transportation was valid. The validity of said section of the Code as applied was denied and drawn in question by plaintiff in error on the ground that Congress has acted upon the subject of released liability and agreed valuation provisions in contracts for interstate rail transportation.

32 XVI.

The Supreme Court of Iowa erred in holding and deciding that Section 2074 of the Code of the State of Iowa, as applied to contracts for interstate rail transportation, was valid, if repugnant to and in conflict with the terms and provisions of a contract entered into in accordance with terms and provisions contained in a tariff or tariffs published and filed in accordance with the Interstate Commerce Act, as amended, when said terms and provisions are contained in said tariff or tariffs.

J. L. PARRISH,
ROBT. J. BANNISTER,
LADD & ROGERS,
Att'ys for the Chicago, Rock Island & Pacific Railway Co., Plaintiff in Error.

33 In the Supreme Court of Iowa, September Term, A. D. 1911.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Plaintiff in Error,
vs.
JELSKE CRAMER, Defendant in Error.

Order Allowing Writ of Error.

On this 16th day of December, A. D., 1911, this cause came on to be heard upon the petition of the plaintiff in error for the allowance of the Writ of Error herein, and the court upon consideration of the said petition and the assignments of error made and filed herein finds that said plaintiff is entitled to have said Writ of Error allowed.

It is therefore considered, ordered and adjudged by the court that Writ of Error be and it is hereby allowed for the review by the Supreme Court of the United States of the errors assigned and the judgment entered herein, and the amount of the bond on said Writ of Error is hereby fixed at the sum of $2,500.00.

JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

34 In the Supreme Court of the United States of America.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Plaintiff in Error,
vs.
JELSKE CRAMER, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Iowa, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between Jelske Cramer, plaintiff and the Chicago, Rock Island & Pacific Railway Company, Defendant, wherein was drawn in question the validity of a statute of the State of Iowa, or an authority exercised under said statute on the ground of its being repugnant to the Constitution, treaties or laws of the United States of America, and the decision was in favor of the validity of such statute of the State of Iowa; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specifically set up or claimed under such clause of the said Constitution, treaty, statute or commission, a manifest error has happened to the great damage of

35 the said Chicago, Rock Island & Pacific Railway Company, as by its complaint appears. We being willing that error, if any have been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all the things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same at Washington on the fifteenth day of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the said Supreme Court, this Sixteenth day of December, in the year of our Lord one thousand nine hundred and eleven.

Issued at the office, in the City of Des Moines, State of Iowa, with the seal of the Circuit Court of the United States for the Southern District of Iowa, dated as aforesaid.

[Seal Circuit Court, Southern District of Iowa.]

WM. C. McARTHUR,
Clerk of the Circuit Court of the United States for the Southern District of Iowa.

36 In the Supreme Court of Iowa.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Plaintiff in Error,
vs.
JELSKE CRAMER, Defendant in Error.

Supersedeas Bond.

Know all men by these presents: That we, The Chicago, Rock Island & Pacific Railway Company, as principal, and Charles S. Denman as surety, are held and firmly bound unto Jelske Cramer in the penal sum of $2,500.00, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and assigns firmly by these presents.

Sealed with our seals and dated this fifteenth day of December, A. D., 1911.

Whereas, lately at the September, A. D., 1911 term of the Supreme Court of Iowa, in a suit pending in said court, between Jelske Cramer as plaintiff and the Chicago, Rock Island & Pacific Railway Company, defendant, a judgment was affirmed against the Chicago, Rock Island & Pacific Railway Company for the sum of $828.00 in favor of the said Jelske Cramer, plaintiff, said judgment and order being made on the 20th day of November, 1911, and the said Chicago, Rock Island & Pacific Railway Company has obtained a Writ of Error to the said court to review and reverse the judgment and order in the suit aforesaid, and a citation directed to the said Jelske Cramer, citing and admonishing him to be and appear in the Supreme Court of the United States in the City of Washington, in the District of Columbia, within thirty days from and after the date of said citation.

37 Now the condition of the above obligation is such that if the said Chicago, Rock Island & Pacific Railway Company shall prosecute the said proceeding to effect and shall answer to all damages and costs if it fail to make good its appeal, then the above obligation to be void, otherwise to be and remain in full force and effect.

THE CHICAGO, ROCK ISLAND &
PACIFIC RAILWAY COMPANY,
By ROBT. J. BANNISTER,
Its Attorney, Principal.
CHARLES S. DENMAN, *Surety.*

STATE OF IOWA,
Polk County, ss:

I, Chas. S. Denman, being duly sworn on oath depose and say, that I am a resident of the State of Iowa; that I own property in the State of Iowa subject to execution and in excess of the total amount of my debts, exceeding in value the sum of $5,000.00.

CHARLES S. DENMAN.

Subscribed and sworn to before me this 15th day of December, A. D., 1911, by Chas. S. Denman.

[NOTARIAL SEAL.] DENTON B. HALL,
Notary Public in and for Polk County, Iowa.

The above and foregoing bond is hereby approved and accepted.

JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

38 In the Supreme Court of Iowa, September Term, A. D. 1911.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Plaintiff in Error,
vs.
JELSKE CRAMER, Defendant in Error.

Citation.

UNITED STATES OF AMERICA, *ss:*

To Jelske Cramer, or to Nagle & Nagle, his attorneys:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a Writ of Error, filed in the Clerk's office of the Supreme Court of the State of Iowa, wherein the Chicago, Rock Island & Pacific Railway Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John C. Sherwin, Chief Justice of the Supreme Court of Iowa, this 16th day of December, in the year of our Lord one thousand nine hundred and eleven.

JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

We hereby accept service of the above citation and acknowledge receipt of copy thereof at Clarion, in the County of Wright, this 18 day of December, A. D., 1911.

NAGLE & NAGLE,
Attorneys for Jelske Cramer,
Defendant in Error.

39 STATE OF IOWA, *ss:*

I, B. W. Garrett, Clerk of the Supreme Court of Iowa, do hereby certify that the above and foregoing pages contain a true and correct transcript of the Record, Opinion and final Judgment in the case of the Chicago, Rock Island and Pacific Railway Company, Plaintiff in Error, against Jleske Cramer, defendant in Error, as full, true

and complete as the same now appears, and remains on file and of record in this office.

I further certify that the Petition for a Writ of Error, Assignment of Errors, Order for Writ, Writ of Error, Supersedeas Bond, with order of approval thereon and citation with return of service thereon, are hereto attached in their original form and that true and correct copies of same have been retained in this office and this return is made in obedience to said writ of error.

In testimony whereof, my signature and the Seal of said Court hereto attached at Des Moines, Iowa, this 27th day of December, 1911.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk of the Supreme Court of Iowa.
—— ——, *Deputy.*

Endorsed on cover: File No. 22,994. Iowa Supreme Court. Term No. 156. Chicago, Rock Island & Pacific Railway Company, plaintiff in error, vs. Jelske Cramer. Filed January 2d, 1912. File No. 22,994.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1913.

No. 156

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

JELSKE CRAMER,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This case, here upon a writ of error sued out from the Supreme Court of Iowa, is similar in all respects to the case of *M. K. & T. Ry. Co.* v. *Harriman*, 227 U. S., 657, and the law as applied to the facts in that case, as well as the law as applied to the facts in *Kansas City Southern* v. *Carl*, 227 U. S., 639, *Wells Fargo* v. *Neiman Marcus Co.*, 227 U. S., 469, *Adams*

Express Co. v. *Croninger,* 226 U. S., 491, *C., B. & Q. R. R. Co.* v. *Miller,* 226 U. S., 513, and *C., St. P., etc., Ry.* v. *Latta,* 226 U. S., 519, is applicable to the facts hereinafter set out

On April 25th, 1910, defendant in error filed his petition in the trial court, alleging that on March 22, 1910, he delivered to the plaintiff in error at Galt, Iowa, for transportation to Chicago, Ill., 60 hogs, and that plaintiff in error so negligently delayed their transportation, and so negligently failed to care for them in transit that 30 of said hogs were dead when delivered, whereby defendant in error was damaged to the extent of $992.25. (Rec., 1, 2.)

To this petition plaintiff in error filed an answer in three counts. In count 1 it was stated that because of a written contract between the parties, defendant in error assumed all risk of watering, bedding, etc., and plaintiff in error did not agree to transport within any specified time. It was further stated that plaintiff in error negligently bedded and overloaded said car, because of which facts, only, the hogs became overheated and died. (Rec., 2.) Count 2 stated (Rec., 3) among other things, that at the time of shipment, defendant in error had on file with the Interstate Commerce Commission and at Galt, Iowa, its tariff rates on hogs; that in said tariff rates so filed were two rates from Galt, Iowa, to Chicago, Ill., one of which applied over the line of the plaintiff in error where the value of the hogs did not exceed $10.00 per head, and the other of which applied over the line of the plaintiff in error where the value of the hogs exceeded $10.00 per head; that said tariff rates expressly provided that

where hogs were shipped under the lower rate, in case of total loss of any of such hogs, the liability of the plaintiff in error should not exceed $10.00 per head; that defendant in error selected the lower rate and entered into a written contract with the plaintiff in error, which provided that in case of total loss of any of such hogs for which the plaintiff in error might be liable, payment was to be made on the basis of the actual value at the time and place of shipment, but in no case should the liability exceed $10.00 per head; that said contract further provided that in making the said contract the undersigned owner of the stock expressly acknowledged that he had the option in making said contract under the tariff rates either at the carrier's risk, or upon a limited liability, and that he had selected the rate and liability named therein, and expressly accepted and agreed to all stipulations and conditions therein named. A copy of the said contract was made a part of the answer. (Printed Rec., 4.) This said contract was the form of live stock contract similar to that with which this court had to deal in the case of *M., K. & T.* v. *Harriman, supra.* The said contract is set out in full at pages 5, 6, 7, 8 and 9 of the printed record.

Count 3 (Printed Rec., 4) after setting forth a number of the allegations contained in count 2, further alleged that defendant in error, in order to secure the transportation of his hogs at a less than the published rate, wrongfully represented that the value of the hogs in question did not exceed $10.00 per head, and that defendant in error represented in his contract that the value of the hogs therein

did not exceed $10.00 per head, when, as a matter of fact, the value of the said hogs was much in excess of $10.00 per head, which fact was known to the defendant in error and was not known to the plaintiff in error, and that said hogs were transported at the lower rate, based on a valuation not exceeding $10.00 per head.

Defendant in error demurred to each count of the answer. The trial court overruled the demurrer to the first count, but sustained it as to the second and third counts. Trial was had upon the issues as presented in defendant in error's petition and count 1 of plaintiff in error's answer, which resulted in a judgment in favor of the defendant in error for $828.00 and costs (Printed Rec., 10), which was affirmed upon appeal to the Supreme Court of the State of Iowa.

The only question is whether the Supreme Court of Iowa erred in refusing to hold that the amount to be recovered by defendant in error should not exceed $10.00 per head for each hog found dead. It was contended in the State Courts that the agreed valuation heretofore mentioned was valid and binding upon the shipper, but the State Supreme Court held that the Iowa statute invalidated the contract in so far as the agreed valuation was concerned. The Iowa statute referred to is as follows:

> "No contract, receipt, rule or regulation shall exempt any railway corporation engaged in transporting persons or property, from the liability of a common carrier or carrier of passengers, which would exist had no contract, receipt, rule or regulation been made or entered into."

Specification of Errors.

1. The Supreme Court of Iowa erred in holding that the ruling of the trial court in sustaining the demurrer to the second count of the answer of the plaintiff in error was correct.

2. The Supreme Court of Iowa erred in holding that the ruling of the trial court in sustaining the demurrer to the third count of the answer of the plaintiff in error was correct.

3. The Supreme Court of Iowa erred in affirming the judgment of the trial court.

4. The Supreme Court of Iowa erred in holding that the rules and regulations contained in the published tariffs of the plaintiff in error, which required the shipper to declare the value of his animals, and be bound thereby, were invalid.

5. The Supreme Court of Iowa erred in holding that the rights of the parties to this suit were determined by the provisions of the statute of Iowa, relied upon by the defendant in error.

6. The Supreme Court of Iowa erred in holding that the statute of Iowa invalidated the contract for an agreed valuation, which contract determined the rate.

7. The Supreme Court of Iowa erred in holding that the trial court was right in sustaining the demurrer to the defendant in error to the second count of the answer of the plaintiff in error.

8. The Supreme Court of Iowa erred in holding that the trial court was right in sustaining the demurrer of the defendant in error to the third count of the answer of the plaintiff in error.

BRIEF OF ARGUMENT.

I.

THE PROVISIONS OF SECTION 20 OF THE ACT OF FEBRUARY 4, 1887, AS AMENDED BY THE ACT OF JUNE 29, 1906, 34 STAT. C., 3591, CONSTITUTE AN EXCLUSIVE REGULATION OF CONTRACTS FOR INTERSTATE SHIPMENTS BY RAILROAD COMMON CARRIERS, SUPERSEDING ALL STATE REGULATIONS UPON THE SAME SUBJECT.

The Act of June 29, above referred to, is as follows:

> "That any common carrier, railroad or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered, or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.
>
> That the common carrier, railroad or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad or transportation company on whose line the loss, damage or injury shall have been sustained, the amount of such loss, damage or injury, as it may be required to

pay to the owners of such property, as may be evidenced by any receipt, judgment or transcript thereof."

By virtue of this enactment, Congress took possession of the subject of the liability of a common carrier on interstate shipments and of the regulation of contracts for such shipments, and consequently all state regulations with reference to the same subject matter were superseded. The statute of Iowa, heretofore set out, was therefore invalid in so far as it was held to affect the contract of shipment in this case.

C., B. & Q. v. *Miller*, 226 U. S., 513.

Adams Express Co. v. *Croninger*, 226 U. S., 491.

C., St. P., etc., v. *Latta*, 226 U. S., 519.

II.

THE LIABILITY IMPOSED BY SAID AMENDED SECTION 20, IS THE LIABILITY IMPOSED BY THE COMMON LAW UPON A COMMON CARRIER, AND MAY BE LIMITED OR QUALIFIED BY SPECIAL CONTRACT WITH THE SHIPPER, PROVIDED THE LIMITATION OR QUALIFICATION IS REASONABLE AND DOES NOT EXEMPT FROM LOSS DUE TO NEGLIGENCE.

This is the law with reference to contracts for interstate shipments. *M., K. & T.* v. *Harriman*, 227 U. S., 567, at 672. A carrier is permitted by fair and reasonable agreement to limit the amount recoverable in case of loss, to an agreed value made in order to obtain the lower of two rates. *Adams Express Co.* v. *Croninger*, 226 U. S., 491, at 509.

In the present case, defendant in error agreed with the plaintiff in error, in order to get the lower of two rates, that in case of loss settlement was to be made on the agreed value of $10.00 per head for each hog.

> "The valuation declared or agreed as evidenced by the contract of shipment upon which the published tariff rate is applied, must be conclusive in an action to recover for loss or damage a greater sum."
>
> *Kansas City Southern* v. *Carl*, 227 U. S., 639, at page 652.

III.

AN AGREED VALUATION REGULATION DETERMINING A RATE IS, WHEN FILED AND PUBLISHED ACCORDING TO LAW, IN EFFECT A PART OF THE ACT OF CONGRESS. ITS REASONABLENESS IS NOT OPEN TO QUESTION IN THIS ACTION.

A carrier is required by law to publish its rates and any rules or regulations which in any wise effect or determine said rates. After being so published, they cannot be deviated therefrom, even in the slightest particular, but stand as the law, binding as well upon the shipper as the carrier.

L. & N. v. *Motley* 219 U. S., 467.

Texas & Pacific v. *Abilene Co.*, 204 U. S., 426.

Armour v. *U. S.*, 209 U. S., 56.

Texas & Pacific v. *Mugg*, 202 U. S., 242.

Poor Grain Co. v. *C., B. & Q.*, 12 I. C. C. Reports, 492-546.

Blinn v. *Southern Pacific*, 18 I C. C. Reports, 430.

It needs neither argument nor citation of authorities to substantiate at this time the proposition that the reasonableness of such a regulation as the one in question is primarily within the jurisdiction of the Interstate Commerce Commission, and hence is not open to question in this case.

Conclusion.

We have not discussed the questions involved in this case at greater length because they have been conclusively answered in recent decisions by this court. Plaintiff in error contends that under the circumstances heretofore set out, the agreed valuation regulation limited the defendant in error to a recovery of $10.00 per head for each hog lost, if liability therefor was established; that the lower courts were without power and jurisdiction to nullify this regulation, and that the judgment should be reversed, for its enforcement will enable the plaintiff and compel the defendant to violate the Interstate Commerce acts, and will destroy the effect which was intended to be accomplished by their passage.

M. L. Bell.

Attorney for Plaintiff in Error.